

AGENCY RULEMAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT

Title 2 - "Government of the State of California," Division 3 - "Executive Department," Part 1 - "State Departments and Agencies," Chapter 3.5 - "Administrative Regulations and Rulemaking" (*Government Code* Sections 11340-11359)

CHAPTER 3.5 "ADMINISTRATIVE REGULATIONS AND RULEMAKING"

ARTICLE 1. GENERAL

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Section 11340. Legislative Finding and Declaration

The Legislature finds and declares as follows:

- (a) There has been an unprecedented growth in the number of administrative regulations in recent years.
- (b) The language of many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulations.
- (c) Substantial time and public funds have been spent in adopting regulations, the necessity for which has not been established.
- (d) The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals.
- (e) There exists no central office in state government with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute and are consistent with other law.
- (f) Correcting the problems that have been caused by the unprecedented growth of regulations in California requires the direct involvement of the Legislature as well as

that of the executive branch of state government.

(g) The complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.

Section 11340.1. Legislative Intent

(a) The Legislature therefore declares that it is in the public interest to establish an Office of Administrative Law which shall be charged with the orderly review of adopted regulations. It is the intent of the Legislature that the purpose of such review shall be to reduce the number of administrative regulations and to improve the quality of those regulations which are adopted. It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process. It is the intent of the Legislature that neither the Office of Administrative Law nor the court should substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations. It is the intent of the Legislature that while the Office of Administrative Law will be part of the executive branch of state government, that the office work closely with, and upon request report directly to, the

Legislature in order to accomplish regulatory reform in California.

(b) It is the intent of the Legislature that the California Code of Regulations made available on the Internet by the office pursuant to Section 11344 include complete authority and reference citations and history notes.

Section 11340.2. Establishment of Office; Director and Deputy Director

(a) The Office of Administrative Law is hereby established in state government. The office shall be under the direction and control of an executive officer who shall be known as the director. There shall also be a deputy director. The director's term and the deputy director's term of office shall be coterminous with that of the appointing power, except that they shall be subject to reappointment.

(b) The director and deputy director shall have the same qualifications as a hearing officer and shall be appointed by the Governor subject to the confirmation of the Senate.

Section 11340.3. Personnel

The director may employ and fix the compensation, in accordance with law, of such professional assistants and clerical and other employees as is deemed necessary for the effective conduct of the work of the office.

Section 11340.4. Office Authorized to Study Administrative Rulemaking

(a) The office is authorized and directed to do the following:

(1) Study the subject of administrative rulemaking in all its aspects.

(2) In the interest of fairness, uniformity, and the expedition of business, submit its suggestions to the various agencies.

(3) Report its recommendations to the Governor and Legislature at the commencement of each general session.

(b) All agencies of the state shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control. Nothing in this subdivision authorizes an agency to provide access to records required by statute to be kept confidential.

Law Revision Commission Comment:

Section 11340.4 transfers to the Office of Administrative Law authority formerly found in Section 11370.5 relating to the study of "administrative law" by the Office of Administrative Hearings, to the extent that authority related to administrative rulemaking. (25 Cal.L.Rev. Comm. Reports 55 (1995))

Section 11340.5. Use of regulations

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in ~~subdivision (g) of Section 11342~~ Section 11342.600, unless the guideline, criterion,

bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in ~~subdivision (g) of Section 11342~~ Section 11342.600.

(c) The office shall do all of the following:

(1) File its determination upon issuance with the Secretary of State.

(2) Make its determination known to the agency, the Governor, and the Legislature.

(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

(4) Make its determination available to the public and the courts.

(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs:

(1) The court or administrative agency proceeding involves the party that sought the determination from the office.

(2) The proceeding began prior to the party's request for the office's determination.

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in ~~subdivision (g) of Section 11342~~ Section 11342.600.

Section 11340.6. Petition for Adoption or Repeal; Contents

Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

- (a) The substance or nature of the regulation, amendment, or repeal requested.
- (b) The reason for the request.
- (c) Reference to the authority of the state agency to take the action requested.

Section 11340.7. Petition for Adoption, Amendment or Repeal; Relief; Reconsideration

(a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny

the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

Section 11340.8. Acceptance of Comments via Fax or Electronic Mail; Posting Rulemaking Documents on the Internet.

In order to make the regulatory process more user friendly and to improve communication between affected businesses and the regulatory agencies, each state agency that proposes regulations pursuant to this chapter shall do all of the following:

(a) Accept comments from interested parties by facsimile and electronic mail.

(b) Post on its Internet website, if the agency has an Internet website, information regarding the proposed regulation or proposed regulatory repeal or amendment that includes, but is not limited to, all of the following:

(1) Notice of the proposed action.

(2) Initial statement of reasons for the regulation or proposed repeal or amendment.

(3) Text of the proposed regulation or proposed amendment to the regulation or instructions on how to obtain the text.

(4) Final statement of reasons.

(5) If applicable, a dated notice of the intent of the agency to discontinue the proposed action.

(6) The office's decisions on the regulation, proposed regulation, or proposed amendment or repeal of a regulation.

(7) The date the regulation was filed with the Secretary of State.

(8) The effective date of the regulation.

(9) A statement to the effect that a business or person submitting a comment to a proposed regulation or proposed amendment or repeal of a regulation has the right to request a copy of the final statement of reasons.

(c) Publication under subdivision (b) supplements any other required form of publication or distribution. The failure to comply with this section is not grounds for disapproval of a proposed regulation. Subdivision (b) does not require an agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

Section 11340.85. Electronic communication

(a) As used in this section, "electronic communication" includes electronic transmission of written or graphical material by electronic mail, facsimile, or other means, but does not include voice communication.

(b) Notwithstanding any other provision of this chapter that refers to mailing or to oral or written communication:

(1) An agency may permit and encourage use of electronic communication, but may not require use of electronic communication.

(2) An agency may publish or distribute a document required by this chapter or by a regulation implementing this chapter by means of electronic communication, but shall not make that the exclusive means by which the document is published or distributed.

(3) A notice required or authorized by this chapter or by a regulation implementing this chapter may be delivered to a person by means of electronic communication if the person has expressly indicated a willingness to receive the notice by means of electronic communication.

(4) A comment or petition regarding a regulation may be delivered to an agency by means of electronic communication if the agency has expressly indicated a willingness to receive a comment or petition by means of electronic communication.

(c) An agency that maintains an Internet website or other similar forum for the electronic publication or distribution of written material shall publish the following materials on that website or other forum:

(1) Any public notice required by this chapter or by a regulation implementing this chapter. For the purposes of this paragraph, "public notice" means a notice that is required to be given by an agency to persons who have requested notice of the agency's regulatory actions.

(2) The initial statement of reasons prepared pursuant to subdivision (b) of Section 11346.2.

(3) The final statement of reasons prepared pursuant to subdivision (a) of Section 11346.9.

(4) Notice of a decision not to proceed prepared pursuant to Section 11347.

(5) The text of a proposed regulation or instructions on how to obtain a copy of the text.

(d) Publication under subdivision (c) supplements any other required form of publication or distribution. Failure to comply with subdivision (c) is not grounds for disapproval of a proposed regulation. Subdivision (c) does not require an agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

(e) Nothing in this section precludes the office from requiring that the material submitted to the office for publication in the California Code of Regulations or the California Regulatory Notice Register be submitted in electronic form.

11340.9. Exceptions

This chapter does not apply to any of the following:

(a) An agency in the judicial or legislative branch of the state government.

(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

(d) A regulation that relates only to the internal management of the state agency.

(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute,

negotiating a commercial arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

(1) Enable a law violator to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give clearly improper advantage to a person who is in an adverse position to the state.

(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

(g) A regulation that establishes or fixes rates, prices, or tariffs.

(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

Section 11341. Office of Administrative Law's Identification Number for each Regulatory Action

(a) The office shall establish a system to give a unique identification number to each regulatory action.

(b) The office and the state agency taking the regulatory action shall use the identification number given by the office pursuant to subdivision (a) to refer to the regulatory action for which a notice has already been published in the California Regulatory Notice Register.

(c) The identification number shall be sufficient information for a member of the public to identify and track a regulatory action both

with the office and the state agency taking the regulatory action. No other information pertaining to the regulatory action shall be required of a member of the public if the identification number of the regulatory action has been provided.

Section 11342. Definitions.

[Repealed.]

Section 11342.1. Scope of Authority

Except as provided in Section 11342.4, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any regulation. Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

Section 11342.2. Validity of Regulations

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 11342.4. Regulations to Carry Out Provisions of Chapter

The office shall adopt, amend, or repeal regulations for the purpose of carrying out the provisions of this chapter.

~~ARTICLE 2. DEFINITIONS; AUTHORITY; VALIDITY; REGULATIONS IMPLEMENTING THE ACT.~~

ARTICLE 2. DEFINITIONS.

SECTION

~~11342. Definitions~~

[Note: Sections 11342.1, 11342.2. and 11342.4 now fall under Article 1.]

11342.510. Application of definitions

11342.520. Agency

11342.530. Building Standard

11342.535. Cost Impact

11342.540. Director

11342.550. Office

11342.560. Order of Repeal

11342.570. Performance Standard

11342.580. Plain English

11342.590. Prescriptive Standard

11342.595. Proposed Action

11342.600. Regulation

11342.610. Small Business

**~~Section 11342. "State Agency," "Agency,"
"Regulation," "Order of Repeal,"~~**

"Office," "Small Business" and "Plain English."

—In this chapter, unless otherwise specifically indicated, the following definitions apply:

—(a) "Agency" and "state agency" do not include an agency in the judicial or legislative departments of the state government.

—(b) "Office" means the Office of Administrative Law.

—(c) "Order of repeal" means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

—(d) "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective.

—(e) "Plain English" means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English.

—(f) "Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

—(g) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. "Regulation" does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not

a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

—(h)(1) "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in paragraph (2), that is both of the following:

—(A) Independently owned and operated.

—(B) Not dominant in its field of operation.

—(2) "Small business" does not include the following professional and business activities:

—(A) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

—(B) An insurance company, either stock or mutual.

—(C) A mineral, oil, or gas broker; a subdivider or developer.

—(D) A landscape architect, an architect, or a building designer.

—(E) An entity organized as a nonprofit institution.

—(F) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

—(G) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.

~~—(H) A petroleum producer, a natural gas producer, a refiner, or a pipeline.~~

~~—(I) A business activity exceeding the following annual gross receipts in the categories of:~~

~~—(i) Agriculture, one million dollars (\$1,000,000).~~

~~—(ii) General construction, nine million five hundred thousand dollars (\$9,500,000).~~

~~—(iii) Special trade construction, five million dollars (\$5,000,000).~~

~~—(iv) Retail trade, two million dollars (\$2,000,000).~~

~~—(v) Wholesale trade, nine million five hundred thousand dollars (\$9,500,000).~~

~~—(vi) Services, two million dollars (\$2,000,000).~~

~~—(vii) Transportation and warehousing, one million five hundred thousand dollars (\$1,500,000).~~

~~—(J) A manufacturing enterprise exceeding 250 employees.~~

~~—(K) A health care facility exceeding 150 beds or one million five hundred thousand dollars (\$1,500,000) in annual gross receipts.~~

[Note: Sections 11342.1, 11342.2, and 11342.4 now fall under Article 1.]

Section 11342.510. Application of definitions

Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

Section 11342.520. Agency.

"Agency" means state agency.

Section 11342.530. Building standard.

"Building standard" has the same meaning provided in Section 18909 of the Health and Safety Code.

Section 11342.535. Cost Impact.

"Cost impact" means the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

Section 11342.540. Director.

"Director" means the director of the office.

Section 11342.550. Office.

"Office" means the Office of Administrative Law.

Section 11342.560. Order of Repeal

"Order of repeal" means any resolution, order, or other official act of a state agency that expressly repeals a regulation in whole or in part.

Section 11342.570. Performance standard

"Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective.

Section 11342.580. Plain English.

"Plain English" means language that satisfies the standard of clarity provided in Section 11349.

Section 11342.590. Prescriptive standard.

"Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

Section 11342.595. Proposed Action.

"Proposed action" means the regulatory action submitted to the office for publication in the California Regulatory Notice Register.

Section 11342.600. Regulation.

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Section 11342.610. Small business.

(a) "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in subdivision (b), that is both of the following:

(1) Independently owned and operated.

(2) Not dominant in its field of operation.

(b) "Small business" does not include the following professional and business activities:

(1) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(2) An insurance company, either stock or mutual.

(3) A mineral, oil, or gas broker.

(4) A subdivider or developer.

(5) A landscape architect, an architect, or a building designer.

(6) An entity organized as a nonprofit institution.

(7) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(8) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.

(9) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(10) A manufacturing enterprise exceeding 250 employees.

(11) A health care facility exceeding 150 beds or one million five hundred thousand dollars (\$1,500,000) in annual gross receipts.

(c) "Small business" does not include the following business activities:

- (1) Agriculture, where the annual gross receipts exceed one million dollars (\$1,000,000).
- (2) General construction, where the annual gross receipts exceed nine million five hundred thousand dollars (\$9,500,000).
- (3) Special trade construction, where the annual gross receipts exceed five million dollars (\$5,000,000).
- (4) Retail trade, where the annual gross receipts exceed two million dollars (\$2,000,000).
- (5) Wholesale trade, where the annual gross receipts exceed nine million five hundred thousand dollars (\$9,500,000).
- (6) Services, where the annual gross receipts exceed two million dollars (\$2,000,000).
- (7) Transportation and warehousing, where the annual gross receipts exceed one million five hundred thousand dollars (\$1,500,000).

ARTICLE 3. FILING AND PUBLICATION

SECTION

- 11343. Transmittal of certified copies of regulations
- 11343.1. Style; Endorsement
- 11343.2. Endorsement of Time and Date of Filing; Public Inspection; Fees; Prohibition
- 11343.4. Effective date of regulations
- 11343.5. Filing of regulatory code or supplement
- 11343.6. Rebuttable Presumptions; Judicial Notice
- 11343.8. Filing and Publication other than Required by Article

Section 11343. Transmittal of certified copies of regulations

Every state agency shall:

(a) Transmit to the office for filing with the Secretary of State a certified copy of every regulation adopted or amended by it except one ~~which:~~ that is a building standard.

~~(1) Establishes or fixes rates, prices, or tariffs.~~

~~—(2) Relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the order determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.~~

~~—(3) Is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.~~

~~—(4) Is a building standard, as defined in Section 18909 of the Health and Safety Code.~~

(b) Transmit to the office for filing with the Secretary of State a certified copy of every order of repeal of a regulation required to be filed under subdivision (a).

(c) Deliver to the office, at the time of transmittal for filing a regulation or order of repeal six duplicate copies of the regulation or order of repeal, together with a citation of the authority pursuant to which it or any part thereof was adopted.

(d) Deliver to the office a copy of the notice of proposed action required by Section 11346.4.

(e) Transmit to the ~~State~~ California Building Standards Commission for approval a certified copy of every regulation, or order of repeal of a regulation, that is a building standard ~~or administrative regulation that applies directly to the implementation or enforcement of building standards,~~ together with a citation of authority pursuant to which it or any part

thereof was adopted, a copy of the notice of proposed action required by Section 11346.4, and any other records prescribed by the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code).

(f) Whenever a certification is required by this section, it shall be made by the head of the state agency or his or her designee which is adopting, amending, or repealing the regulation and the certification and delegation shall be in writing.

Section 11343.1. Style; Endorsement

(a) All regulations transmitted to the Office of Administrative Law for filing with the Secretary of State shall conform to the style prescribed by the office.

(b) Regulations approved by the office shall bear an endorsement by the office affixed to the certified copy which is filed with the Secretary of State.

Section 11343.2. Endorsement of Time and Date of Filing; Public Inspection; Fees; Prohibition

The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with or delivered to him or her, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection.

No fee shall be charged by any state officer or public official for the performance of any official act in connection with the certification or filing of regulations pursuant to this article.

Section 11343.4. Effective date of regulation

A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the 30th day after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by ~~this~~ the statute.

~~(b) It is a regulation adopted under Section 8054 or 3373 of the Financial Code, in which event it shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.~~

~~(b)~~ (c) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

~~(c)~~ (d) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

Section 11343.5. Filing of regulatory code or supplement

Within 10 days from the receipt of printed copies of the California Code of Regulations or ~~other California Regulatory Code Supplement~~ of the California Code of Regulations Supplement from the State Printing Office, the office shall file one copy of the particular issue of the code or supplement in the office of the county clerk

of each county in this state, or if the authority to accept filings on his or her behalf has been delegated by the county clerk of any county pursuant to Section 26803.5, in the office of the person to whom that authority has been delegated.

Section 11343.6. Rebuttable Presumptions; Judicial Notice

The filing of a certified copy of a regulation or an order of repeal with the Secretary of State raises the rebuttable presumptions that:

- (a) It was duly adopted.
 - (b) It was duly filed and made available for public inspection at the day and hour endorsed on it.
 - (c) All requirements of this chapter and the regulations of the office relative to such regulation have been complied with.
 - (d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.
- The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

Section 11343.8. Filing and Publication Other Than Required by Article

Upon the request of a state agency, the office may file with the Secretary of State and the office may publish in such manner as it believes proper, any regulation or order of repeal of a regulation not required by this article to be filed with the Secretary of State.

ARTICLE 4. THE CALIFORNIA CODE OF REGULATIONS, THE CALIFORNIA CODE OF REGULATIONS SUPPLEMENT, AND THE CALIFORNIA REGULATORY NOTICE REGISTER

SECTION

- 11344. Code of Regulations
- 11344.1. California Regulatory Notice Register
- 11344.2. Supplying sets to county clerks or delegated persons
- 11344.3. Document Published in the California Regulatory Notice Register
- 11344.4. Sale of publications
- 11344.6. Presumption from publication in Code or Supplement;
- 11344.7. Purchase of publications
- 11344.9. Obsolete references
- 11345. Deadline for OAL
Implementation of Unique
Identification Number and Notice
Register Availability on the
Internet

Section 11344. Code of Regulations

The office shall do all of the following:

- (a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the California Code of Regulations. On and after July 1, 1998, the office shall make available on the Internet, free of charge, the full text of the California Code of Regulations, and may contract with another state agency or a private entity in order to provide this service.
- (b) Provide for the compilation, printing, and publication of weekly updates of the

California Code of Regulations. This publication shall be known as the ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement and shall contain amendments to the code.

(c) Provide for the publication dates and manner and form in which regulations shall be printed and distributed and ensure that regulations are available in printed form at the earliest practicable date after filing with the Secretary of State.

(d) Ensure that each regulation is printed together with a reference to the statutory authority pursuant to which it was enacted and the specific statute or other provision of law which the regulation is implementing, interpreting, or making specific.

Section 11344.1. California Regulatory Notice Register

The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies, subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week.

(3) ~~All~~ Summaries of all regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

~~(4) The Governor's action in reviewing the disapprovals of the office, the decisions to repeal, the agency's request for review, the office's response thereto, and the decisions of the Governor's office, as required by Section 11349.7. Material that is required to be published under Sections 11349.5, 11349.7, and 11349.9.~~

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

(c) Post on its website, on a weekly basis:

(1) The California Regulatory Notice Register. Each issue of the California Regulatory Notice Register on the office's website shall remain posted for a minimum of 18 months.

(2) One or more Internet links to assist the public to gain access to the text of regulations proposed by state agencies.

Section 11344.2. Supplying sets to county clerks or delegated persons

The office shall supply a complete set of the California Code of Regulations, and of the ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement in the form provided by the State Printer to the county clerk of any county or to the delegatee of the county clerk pursuant to Section 26803.5, provided the director makes the following two determinations:

(a) The county clerk or the delegatee of the county clerk pursuant to Section 26803.5 is maintaining the code and supplement in complete and current condition in a place and at times convenient to the public.

(b) The California Code of Regulations and ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement are not otherwise reasonably available to the public in the community where the county clerk or the delegatee of the county clerk pursuant to Section 26803.5 would normally maintain the code and supplements by distribution to libraries pursuant to Article 6 (commencing with Section 14900) of Chapter 7 of Part 5.5.

Section 11344.3. Document Published in California Regulatory Notice Register

Every document, other than a notice of proposed rulemaking action, required to be published in the California Regulatory Notice Register by this chapter, shall be published in the first edition of the California Regulatory Notice Register following the date of the document.

Section 11344.4. Sale of publications

(a) The California Code of Regulations, the ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement, and the California Regulatory Notice Register shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution.

(b) All money received by the state from the sale of the publications listed in subdivision (a) shall be deposited in the treasury and credited to the General Fund, except that, where applicable, an amount necessary to cover the printing, publication, and distribution costs shall be credited to the fund from which the costs have been paid.

Section 11344.6. Presumption from publication in Code or supplement

The publication of a regulation in the California Code of Regulations or ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the contents of each regulation which is printed or which is incorporated by appropriate reference into the California Code of Regulations as compiled by the office.

The courts shall also take judicial notice of the repeal of a regulation as published in the ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement compiled by the office.

Section 11344.7. Purchase of publications

Nothing in this chapter precludes any person or state agency from purchasing copies of the California Code of Regulations, the ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement, or the California Regulatory

Notice Register or of any unit of either, nor from printing special editions of any such units and distributing the same. However, where the purchase and printing is by a state agency, the state agency shall do so at the cost or at less than the cost to the agency if it is authorized to do so by other provisions of law.

Section 11344.9. Obsolete references

(a) Whenever the term "California Administrative Code" appears in law, official legal paper, or legal publication, it means the "California Code of Regulations."

(b) Whenever the term "California Administrative Notice Register" appears in any law, official legal paper, or legal publication, it means the "California Regulatory Notice Register."

(c) Whenever the term "California Administrative Code Supplement" or "California Regulatory Code Supplement" appears in any law, official legal paper, or legal publication, it means the "California Regulatory Code Supplement." "California Code of Regulations Supplement."

Section 11345. OAL Deadline to develop Unique Identification Number and to Make Notice Register available on the Internet

The office is not required to develop a unique identification number system for each regulatory action pursuant to Section 11341 or to make the California Regulatory Notice Register available on its website

pursuant to subdivision (c) of Section 11344.1 until January 1, 2002.

ARTICLE 5. PUBLIC PARTICIPATION: PROCEDURE FOR ADOPTION OF REGULATIONS

SECTION

11346. Purpose and application

11346.1. Emergency regulations

11346.2. Notification of Office of Administrative Law

11346.3. Potential economic effect

11346.4. Notice of Proposed Action; Mailing; Delivery; Publication; Effective Period; Notice of Adoption, Amendment or Repeal after Completion and Approval; Grounds to refuse publication; California Regulatory Notice Register

11346.45 Public Discussions of Proposed Regulations Prior to Notice Publication

11346.5. Notice contents

~~11346.54 Assessment of effect of regulations upon jobs and business expansion, elimination or creation [Repealed]~~

11346.7 OAL's Website Link to the Small Business Advocate's Website

11346.8. Public hearing

11346.9. Final statement of reasons and updated informative digest

11347. Notice of decision not to proceed

11347.1. Documents added to rulemaking file

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11347.6 Agency Response to Comments Made by the Office of Small

Business Advocate and the Trade
and Commerce Agency

11348. Maintaining Rulemaking Records
on Pending Rulemaking Actions
in One Central Location

Section 11346. Purpose and application

(a) It is the purpose of this chapter to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in Section 11346.1, the provisions of this chapter are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this chapter repeals or diminishes additional requirements imposed by any statute. This chapter shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.

(b) An agency that is considering adopting, amending, or repealing a regulation may consult with interested persons before initiating regulatory action pursuant to this article.

Section 11346.1. Emergency regulations

~~(a) This article does not apply to any regulation not required to be filed with the Secretary of State under this chapter, and only this section and Sections 11343.4 and 11349.6 apply to an emergency regulation adopted pursuant to subdivision (b), or to any regulation adopted under Section 8054 or 3373 of the Financial Code.~~

(a) The adoption, amendment, or repeal of an emergency regulation is not subject to

any provision of this chapter except this section and Section 11349.6.

(b) Except as provided in subdivision (c), if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

Any finding of an emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action. The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.

The statement and the regulation or order of repeal shall be filed immediately with the office.

(c) Notwithstanding any other provision of law, no emergency regulation that is a building standard, ~~as defined in Section 18909 of the Health and Safety Code~~, shall be filed, nor shall the building standard be effective, unless the building standards ~~are~~ is submitted to the ~~State~~ California Building Standards Commission, and ~~are~~ is approved and filed pursuant to Sections 18937 and 18938 of the Health and Safety Code.

(d) The emergency regulation or order of repeal shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as a part of, the regulation or order of repeal.

(e) No regulation, amendment, or order of repeal adopted as an emergency regulatory action shall remain in effect more than 120 days unless the adopting agency has complied with Sections 11346.2 to ~~11346.9~~ 11347.3, inclusive, ~~prior to the adoption of the emergency regulatory action,~~

~~or has, within the 120-day period, completed the regulation adoption process by formally adopting the emergency regulation, amendment, or order of repeal or any amendments thereto, pursuant to this chapter either before adopting an emergency regulation or within the 120-day period.~~
The adopting agency, prior to the expiration of the 120-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that ~~either Sections 11346.2 to 11346.9~~ 11347.3, inclusive, were complied with ~~prior to either before the emergency regulatory action, or that there was compliance with this section~~ emergency regulation was adopted or within the 120-day period.

(f) In the event an emergency amendment or order of repeal is filed and the adopting agency fails to comply with subdivision (e), the regulation as it existed prior to the emergency amendment or order of repeal shall thereupon become effective and after notice to the adopting agency by the office shall be reprinted in the California Code of Regulations.

(g) In the event a regulation is originally adopted and filed as an emergency and the adopting agency fails to comply with subdivision (e), this failure shall constitute a repeal thereof and after notice to the adopting agency by the office, shall be deleted.

(h) ~~A regulation originally adopted as an emergency regulation, or an emergency regulation substantially equivalent thereto that is readopted as an emergency regulation, shall not be filed with the Secretary of State as an emergency regulation except with the express prior approval of the director of the office.~~

The office shall not file an emergency regulation with the Secretary of State if the emergency regulation is the same as or substantially equivalent to an emergency regulation previously adopted by that agency, unless the director expressly approves the agency's readoption of the emergency regulation.

Section 11346.2. Notification of Office of Administrative Law

Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. ~~If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation. The~~ agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each regulation California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific

by ~~the regulation~~ that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikethrough to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

~~(1) A description of the public problem, administrative requirement, or other condition or circumstance that each adoption, amendment, or repeal is intended to address.~~

~~(1)~~ (2) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

~~(2)~~ (3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

~~(3)~~ (4) (A) A description of the reasonable alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance

standards shall be considered as an alternative.

(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

~~(4)~~ (5) Facts, evidence, documents, testimony, or other evidence ~~upon~~ on which the agency relies to support ~~a finding~~ an initial determination that the action will not have a significant adverse economic impact on business.

~~(5)~~ (6) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement

to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

Section 11346.3. Potential economic effect

(a) State agencies proposing to adopt, ~~or amend, or repeal~~ any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, ~~when adopting new regulations or reviewing or amending existing regulations~~ when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) ~~The regulations~~ The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting ~~regulations~~ a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, ~~when initiating, processing, and adopting regulations~~ with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation. ~~regulations or amendments to regulations.~~

(b)(1) All state agencies proposing to adopt, ~~or amend~~ amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) ~~For purposes of this subdivision,~~ "state agency" shall include every state office, officer, department, division, bureau, board, and commission, ~~whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial or legislative branch of state~~

~~government, This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.~~

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

Section 11346.4. Notice of Proposed Action; Mailing; Delivery; Publication; Effective period; Notice of adoption, amendment, or repeal after completion or approval; grounds to refuse publication; California Regulatory Notice Register

(a) At least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(1) Mailed to every person who has filed a request for notice of regulatory actions with the state agency. Each state agency shall give a person filing a request for notice of regulatory actions the option of being notified of all proposed regulatory actions or being notified of regulatory actions concerning one or more particular programs of the state agency.

(2) In cases in which the state agency is within a state department, mailed or delivered to the director of the department.

(3) Mailed to a representative number of small business enterprises or their representatives ~~which have been identified~~

~~as being affected by the proposed action that are likely to be affected by the proposed action. "Representative" for the purposes of this paragraph includes, but is not limited to, a trade association, industry association, professional association, or any other business group or association of any kind that represents a business enterprise or employees of a business enterprise.~~

(4) When appropriate in the judgment of the state agency, mailed to any person or group of persons whom the agency believes to be interested in the proposed action and published in the form and manner as the state agency shall prescribe.

(5) Published in the California Regulatory Notice Register as prepared by the office for each state agency's notice of regulatory action.

(6) Posted on the state agency's website if the agency has a website.

(b) The effective period of a notice issued pursuant to this section shall not exceed one year from the date thereof. If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.

(c) Once the adoption, amendment, or repeal is completed and approved by the office, no further adoption, amendment, or repeal to the noticed regulation shall be made without subsequent notice being given.

(d) The office may refuse to publish a notice submitted to it if the agency has failed to comply with this article.

(e) The office shall make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.

(f) Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required by this section, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by that statute. The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article.

Section 11346.45. Public Discussions of Proposed Regulations Prior to Notice Publication

(a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

(b) This section does not apply to a state agency in any instance where that state agency is required to implement federal law and regulations for which there is little or no discretion on the part of the state to vary.

(c) If the agency does not or cannot comply with the provisions of subdivision (a), it shall state the reasons for noncompliance with reasonable specificity in the rulemaking record.

(d) The provisions of this section shall not be subject to judicial review or to the provisions of Section 11349.1.

Section 11346.5. Notice contents

(a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

~~(3) An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action. The informative digest shall be drafted in a format similar to the Legislative Counsel's digest on legislative bills.~~ An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) (A) If the proposed action differs substantially from an existing comparable federal regulation or statute, the informative digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes.

(B) If the proposed action affects small business, the informative digest shall also include a plain English policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(C) A policy statement overview explaining the broad objectives of the

regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, ~~or amend~~ amend, or repeal any administrative regulation, ~~determines~~ makes an initial determination that the action may have a significant, statewide adverse economic impact ~~on~~ directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) ~~finds~~ has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses."

(8) If a state agency, in adopting, ~~or~~ amending, or repealing any administrative regulation, ~~determines~~ makes an initial determination that the action will not have a significant, statewide adverse economic impact ~~on~~ directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this ~~determination~~ declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support ~~that finding~~ its initial determination.

An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may

have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) ~~A statement of the potential cost impact of the proposed action on private persons or businesses directly affected, as considered by the agency during the regulatory development process.~~

~~—For purposes of this paragraph, "cost impact" means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.~~

A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

"The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) ~~(11)~~ A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, ~~determines~~ makes an initial determination that the action would have ~~an~~ that effect. In addition, the agency officer designated in paragraph ~~(13)~~ (14), shall make available to the public, upon request,

the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

~~(13)~~ (12) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

~~(14)~~ (13) The name and telephone number of the agency officer to whom ~~inquiries concerning the proposed administrative action may be directed.~~ following:

(A) The agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(B) An agency person or persons designated to respond to questions on the substance of the proposed regulations, where appropriate.

(15) ~~(14)~~ The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

~~(16)~~ (15) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

~~(17)~~ (16) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

~~(18) (17)~~ A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet website or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency ~~officer~~ representative designated in paragraph ~~(13)~~ (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The ~~officer~~ representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

~~11346.54. Assessment of effect of regulations upon jobs and business expansion, elimination or creation~~

~~—(a) All state agencies proposing to adopt or amend any administrative regulation shall assess whether and to what extent it will affect the following:~~

~~—(1) The creation or elimination of jobs within the State of California.~~

~~—(2) The creation of new businesses or the elimination of existing businesses within the State of California.~~

~~—(3) The expansion of businesses currently doing business within the State of California.~~

~~—(b) For purposes of this section, “state agency” shall include every state office, officer, department, division, bureau, board, and commission, whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial or legislative branch of state government, the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.~~

~~—(c) The state agency shall include a statement of the results of this assessment in the notice of proposed action.~~

~~—(d) Information required from state agencies for the purpose of completing this assessment may come from existing state publications.~~

Section 11346.7. OAL’s Website Link to the Small Business Advocate’s Website.

The office shall maintain a link on its website to the website maintained by the Small Business Advocate that also includes the telephone number of the Small Business Advocate.

Section 11346.8. Public hearing

(a) If a public hearing is held, ~~statements, arguments, or contentions, either oral or in writing, or both,~~ both oral and written statements, arguments, or contentions, shall be permitted. The agency may impose reasonable limitations on oral presentations. If a public hearing is not scheduled, the state

agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the

agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, ~~unless adequate provision is made for public comment on that matter.~~ unless the agency complies with Section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.

(e) If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests additional time to respond to the new issue before the state agency takes final action, it is the intent of the Legislature that rulemaking agencies consider granting the request for additional time if, under the circumstances, granting the request is practical and does not unduly delay action on the regulation.

Section 11346.9. Final statement of reasons and updated informative digest

Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, ~~or amendment~~ amendment, or repeal of a

regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with ~~subdivision (d) of Section 11346.8~~ Section 11347.1.

(2) A determination as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts. If the determination is that adoption, amendment, or repeal of the regulation does contain would impose a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action. The agency may aggregate and summarize repetitive or irrelevant comments as a group, and may respond to repetitive comments or summarily dismiss irrelevant comments as a group. For the purposes of this paragraph, a comment is "irrelevant" if it is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.

(4) A determination with supporting information that no alternative considered by the agency would be more effective in

carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

(5) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

(b) Prepare and submit to the office with the adopted regulation an updated informative digest containing a clear and concise summary of the immediately preceding laws and regulations, if any, relating directly to the adopted, amended, or repealed regulation and the effect of the adopted, amended, or repealed regulation. The informative digest shall be drafted in a format similar to the Legislative Counsel's Digest on legislative bills.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation which the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) If an agency determines that a requirement of this section can be satisfied by reference to an agency statement made pursuant to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy the

requirement by incorporating the relevant statement by reference.

Section 11347. Notice of decision not to proceed

(a) If, after publication of a notice of proposed action pursuant to Section 11346.4, but before the notice of proposed action becomes ineffective pursuant to subdivision (b) of that section, an agency decides not to proceed with the proposed action, it shall deliver notice of its decision to the office for publication in the California Regulatory Notice Register.

(b) Publication of a notice under this section terminates the effect of the notice of proposed action referred to in the notice. Nothing in this section precludes an agency from proposing a new regulatory action that is similar or identical to a regulatory action that was previously the subject of a notice published under this section.

Section 11347.1. Documents added to rulemaking file

(a) An agency that adds any technical, theoretical, or empirical study, report, or similar document to the rulemaking file after publication of the notice of proposed action and relies on the document in proposing the action shall make the document available as required by this section.

(b) At least 15 calendar days before the proposed action is adopted by the agency, the agency shall mail to all of the following persons a notice identifying the added document and stating the place and business hours that the document is available for public inspection:

(1) Persons who testified at the public hearing.

(2) Persons who submitted written comments at the public hearing.

(3) Persons whose comments were received by the agency during the public comment period.

(4) Persons who requested notification from the agency of the availability of changes to the text of the proposed regulation.

(c) The document shall be available for public inspection at the location described in the notice for at least 15 calendar days before the proposed action is adopted by the agency.

(d) Written comments on the document or information received by the agency during the availability period shall be summarized and responded to in the final statement of reasons as provided in Section 11346.9.

(e) The rulemaking file shall contain a statement confirming that the agency complied with the requirements of this section and stating the date on which the notice was mailed.

(f) If there are no persons in categories listed in subdivision (b), then the rulemaking file shall contain a confirming statement to that effect.

Section 11347.3. File of rulemaking proceeding

(a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. Commencing no later than the date that the notice of the proposed action is published in the California Regulatory Notice Register, and during all subsequent periods of time that the file is in the agency's possession, the agency shall make the file available to the public for inspection and copying during regular business hours.

(b) The rulemaking file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(9) The date on which the agency made the full text of the proposed regulation available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation ~~the full text as~~ if required to do so by subdivision (c) of Section 11346.8 ~~if the agency made changes to the regulation noticed to the public.~~

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

Section 11347.6. Agency Response to Comments Made By the Office of Small Business Advocate and the Trade and Commerce Agency.

Each state agency that adopts regulations shall, in the final statement of reasons, separately identify comments made by the Office of Small Business Advocate and the Trade and Commerce Agency pursuant to subdivision (e) of Section 15363.6 and respond to each and every comment made by that office or agency directed at the proposed action or at the procedures followed by the agency in proposing or adopting the action, including providing a basis for why those comments were rejected, if applicable.

Section 11348. Maintaining Rulemaking Records on Pending Rulemaking Actions in One Central Location.

Each agency subject to this chapter shall keep its rulemaking records on all of that agency's pending rulemaking actions, in which the notice has been published in the California Regulatory Notice Register, current and in one central location.

ARTICLE 6. REVIEW OF PROPOSED REGULATIONS

SECTION

11349. Standards

11349.1. Review of regulations

11349.2. Adding to rulemaking file during review

- 11349.3. Approval or Disapproval; Return Upon Request of Agency
- 11349.4. Returned Regulations; Readoption; Limited Review
- 11349.5. Review by Governor of Decision by Office of Administrative Law; Written Request for Review; Contents; Delivery; Response; Written Decision; Publication; Overruling Decision of Office
- 11349.6. Emergency regulations

Section 11349. Standards

The following definitions govern the interpretation of this chapter:

(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(c) "Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

(e) "Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

(f) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

Section 11349.1. Review of regulations

(a) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the ~~California Regulatory Code Supplement~~ California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

- (1) Necessity.
- (2) Authority.
- (3) Clarity.
- (4) Consistency.
- (5) Reference.
- (6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to

the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) The agency has not complied with Section 11346.3.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its

original receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

Section 11349.2. Adding to rulemaking file during review

An agency may add material to a rulemaking file that has been submitted to the office for review pursuant to this article if addition of the material does not violate other requirements of this chapter.

Section 11349.3. Approval or Disapproval; Return Upon Request of Agency

(a) The office shall either approve a regulation submitted to it for review and transmit it to the Secretary of State for filing or disapprove it within 30 working days after the regulation has been submitted to the office for review. If the office fails to act within 30 days, the regulation shall be deemed to have been approved and the office shall transmit it to the Secretary of State for filing.

(b) If the office disapproves a regulation, it shall return it to the adopting agency within the 30-day period specified in

subdivision (a) accompanied by a notice specifying the reasons for disapproval. Within seven calendar days of the issuance of the notice, the office shall provide the adopting agency with a written decision detailing the reasons for disapproval. No regulation shall be disapproved except for failure to comply with the standards set forth in Section 11349.1 or for failure to comply with this chapter.

(c) If an agency determines, on its own initiative, that a regulation submitted pursuant to subdivision (a) should be returned by the office prior to completion of the office's review, it may request the return of the regulation. All requests for the return of a regulation shall be memorialized in writing by the submitting agency no later than one week following the request. Any regulation returned pursuant to this subdivision shall be resubmitted to the office for review within the one-year period specified in subdivision (b) of Section 11346.4 or shall comply with Article 5 (commencing with Section 11346) prior to resubmission.

(d) The office shall not initiate the return of a regulation pursuant to subdivision (c) as an alternative to disapproval pursuant to subdivision (b).

Section 11349.4. Returned Regulations; Readoption; Limited Review

(a) A regulation returned to an agency because of failure to meet the standards of Section 11349.1, because of an agency's failure to comply with this chapter may be rewritten and resubmitted within 120 days of the agency's receipt of the written opinion required by subdivision (b) of Section 11349.3 without complying with the notice and public hearing requirements of Sections

11346.4, 11346.5, and 11346.8 unless the substantive provisions of the regulation have been significantly changed. If the regulation has been significantly changed or was not submitted within 120 days of receipt of the written opinion, the agency shall comply with Article 5 (commencing with Section 11346) and readopt the regulation. The director of the office may, upon a showing of good cause, grant an extension to the 120-day time period specified in this subdivision.

(b) Upon resubmission of a disapproved regulation to the office pursuant to subdivision (a), the office shall only review the resubmitted regulation for those reasons expressly identified in the written opinion required by subdivision (b) of Section 11349.3, or for those issues arising as a result of a substantial change to a provision of the resubmitted regulation or as a result of intervening statutory changes or intervening court orders or decisions.

(c) When an agency resubmits a withdrawn or disapproved regulation to the office it shall identify the prior withdrawn or disapproved regulation by date of submission to the office, shall specify the portion of the prior rulemaking record that should be included in the resubmission, and shall submit to the office a copy of the prior rulemaking record if that record has been returned to the agency by the office.

(d) The office shall expedite the review of a regulation submitted without significant substantive change.

Section 11349.5. Review by Governor of Decision by Office of Administrative Law; Written Request for Review; Contents; Delivery; Response; Written Decision; Publication; Overruling Decision of Office

(a) To initiate a review of a decision by the office, the agency shall file a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the written opinion provided by the office pursuant to subdivision (b) of Section 11349.3. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written decision detailing the reasons for disapproval required by subdivision (b) of Section 11349.3.

(2) Copies of all regulations, notices, statements, and other documents which were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) The Governor may overrule the decision of the office disapproving a proposed regulation, an order repealing an

emergency regulation adopted pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the readoption of an emergency regulation pursuant to Section 11346.1. In that event, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall immediately transmit to the Committees on Rules of both houses of the Legislature a statement of his or her reasons for overruling the decision of the office, along with copies of the adopting agency's initial statement of reasons issued pursuant to Section 11346.2 and the office's statement regarding the disapproval of a regulation issued pursuant to subdivision (b) of Section 11349.3. The Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

Section 11349.6. Emergency regulations

(a) In the event the adopting agency has complied with Sections 11346.2 to ~~11346.9~~ 11347.3, inclusive, prior to the adoption of the regulation as an emergency, the office shall approve or disapprove the regulation in accordance with this article.

(b) Emergency regulations adopted pursuant to subdivision (b) of Section 11346.1 shall be reviewed by the office within 10 calendar days after their submittal to the office. The office shall not file the emergency regulations with the Secretary of State if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines

the agency failed to comply with subdivisions (b) and (c) of Section 11346.1.

(c) If the office considers any information not submitted to it by the rulemaking agency when determining whether to file emergency regulations, the office shall provide the rulemaking agency with an opportunity to rebut or comment upon that information.

(d) Within 30 working days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with this chapter.

ARTICLE 7. REVIEW OF EXISTING REGULATIONS

SECTION

11349.7 Legislatively Initiated Review

11349.8 Removal of Ineffective and Inoperative Rules

11349.9 Review by Governor of Office's Decision to Remove Inoperative and Ineffective Rules

Section 11349.7. Legislatively Initiated Review

The office, at the request of any standing, select, or joint committee of the Legislature, shall initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards set forth in Section 11349.1.

The office shall notify interested persons and shall publish notice in the California Regulatory Notice Register that a priority review has been requested, shall consider the written comments submitted by interested persons, the information contained in the rulemaking record, if any, and shall complete each priority review made pursuant to this section within 90 calendar days of the receipt of the committee's written request. During the period of any priority review made pursuant to this section, all information available to the office relating to the priority review shall be made available to the public. In the event that the office determines that a regulation does not meet the standards set forth in Section 11349.1, it shall order the adopting agency to show cause why the regulation should not be repealed and shall proceed to seek repeal of the regulation as provided by this Section in accordance with the following:

(a) In the event it determines that any of the regulations subject to the review do not meet the standards set forth in Section 11349.1, the office shall within 15 days of the determination order the adopting agency to show cause why the regulation should not be repealed. In issuing the order, the office shall specify in writing the reasons for its determination that the regulation does not meet the standards set forth in Section 11349.1. The reasons for its determination shall be made available to the public. The office shall also publish its order and the reasons therefor in the California Regulatory Notice Register. In the case of a regulation for which no, or inadequate, information relating to its necessity can be furnished by the adopting agency, the order shall specify the information which the office requires to make its determination.

(b) No later than 60 days following receipt of an order to show cause why a regulation should not be repealed, the agency shall respond in writing to the office. Upon written application by the agency, the office may extend the time for an additional 30 days.

(c) The office shall review and consider all information submitted by the agency in a timely response to the order to show cause why the regulation should not be repealed, and determine whether the regulation meets the standards set forth in Section 11349.1. The office shall make this determination within 60 days of receipt of an agency's response to the order to show cause. If the office does not make a determination within 60 days of receipt of an agency's response to the order to show cause, the regulation shall be deemed to meet the standards set forth in subdivision (a) of Section 11349.1. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days of the publication of the order to show cause in the California Regulatory Notice Register. During the period of review and consideration, the information available to the office relating to each regulation for which the office has issued an order to show cause shall be made available to the public. The office shall notify the adopting agency within two working days of the receipt of information submitted by the public regarding a regulation for which an order to show cause has been issued. If the office determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this

subdivision the office shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing.

(d) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its decision to repeal, as required by subdivision (c), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

The Governor shall transmit to the rules committee of each house of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the rules committees.

(e) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Regulatory Notice Register.

Section 11349.8. Removal of Ineffective and Inoperative Rules

(a) If the office is notified of, or on its own becomes aware of, an existing regulation in the California Code of Regulations for which the statutory authority has been repealed or becomes ineffective or inoperative by its own terms, the office shall order the adopting agency to show cause why the regulation should not be repealed for lack of statutory authority and shall notify the Legislature in writing of this order. In issuing the order, the office shall specify in writing the reasons for issuance of the order. "Agency," for purposes of this section and Section 11349.9, refers to the agency that adopted the regulation and, if

applicable, the agency that is responsible for administering the regulation in issue.

(b) The agency may, within 30 days after receipt of the written notification, submit in writing to the office any citations, legal arguments, or other information opposing the repeal, including public comments during this period. This section shall not apply where the agency demonstrates in its response that any of the following conditions exists:

(1) The statute or section thereof is simultaneously repealed and substantially reenacted through a single piece of legislation, or where subsequent legislation evinces a specific legislative intent to reenact the substance of the statute or section. When a regulation cites more than one specific statute or section as reference or authority for the adoption of a regulation, and one or more of the statutes or sections are repealed or become ineffective or inoperative, then the only provisions of the regulation which remain in effect shall be those for which the remaining statutes or sections provide specific or general authority.

(2) The statute is temporarily repealed, or rendered ineffective or inoperative by a provision of law which is effective only for a limited period, in which case any regulation described in subdivision (a) is thereby also temporarily repealed, rendered ineffective, or inoperative during that limited period. Any regulation so affected shall have the same force and effect upon the expiration of the limited period during which the provision of law was effective as if that temporary provision had not been enacted.

(3) The statute or section of a statute being repealed, or becoming ineffective or inoperative by its own terms, is to remain in full force and effect as regards events

occurring prior to the date of repeal or ineffectiveness, in which case any regulation adopted to implement or interpret that statute shall likewise be deemed to remain in full force and effect in regards to those same events.

(c) This section shall not be construed to deprive any person or public agency of any substantial right which would have existed prior to, or hereafter exists subsequent to, the effective date of this section.

(d) Thirty days after receipt of the agency's opposition material, or the close of the 30-day agency and public response period if no response is submitted, the office shall do one of the following:

(1) Inform the agency and the Legislature in writing that the office has withdrawn its order to show cause.

(2) Issue a written notice to the agency specifying the reasons for the repeal and its intent to file a Notice of Repeal of the invalid regulation with the Secretary of State. Within seven calendar days of the filing of the Notice of Repeal, the office shall provide the agency, the Governor, and the Legislature with a written decision detailing the reasons for the repeal and a copy of the Notice of Repeal, and publish the office's written decision in the California Regulatory Notice Register.

(e) The office shall order the removal of the repealed regulation from the California Code of Regulations within 30 days after filing the Notice of Repeal, if the agency has not appealed the office's decision, or upon receipt of notification of the Governor's decision upholding the office's decision, if an appeal has been filed pursuant to Section 11349.9.

Section 11349.9. Review by Governor of Office's Decision to Remove Inoperative and Ineffective Rules

(a) To initiate a review of the office's Notice of Repeal pursuant to Section 11349.8, the agency shall appeal the office's decision by filing a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the Notice of Repeal and written decision provided for by paragraph (2) of subdivision (d) of Section 11349.8. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written opinion detailing the reasons for repeal required by paragraph (2) of subdivision (d) of Section 11349.8.

(2) Copies of all statements and other documents that were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days, and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) In the event the Governor overrules the decision of the office, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall transmit to the rules committees of both houses of the Legislature a statement of the reasons for overruling the decision of the office.

ARTICLE 8. JUDICIAL REVIEW

SECTION

11350. Judicial review of validity of regulation

11350.3 Review of regulation disapproved by Office of Administrative Law

Section 11350. Judicial review of validity of regulation

(a) Any interested person may obtain a judicial declaration as to the validity of any regulation or order or repeal by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulations or order of repeal. The regulation or order of repeal may be declared to be invalid for a

substantial failure to comply with this chapter, or, in the case of an emergency regulation or order to repeal, upon the ground that the facts recited in the statement prepared pursuant to subdivision (b) of Section 11346.1 do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation or order of repeal may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

~~For purposes of this section, the record shall be deemed to consist of all material maintained in the file of the rulemaking proceeding as defined in Section 11347.3.~~

(c) The approval of a regulation or order of repeal by the office or the Governor's overruling of a decision of the office disapproving a regulation or order of repeal shall not be considered by a court in any action for declaratory relief brought with respect to a regulation or order of repeal.

(d) In a proceeding under this section, a court may only consider the following evidence:

(1) The rulemaking file prepared under Section 11347.3.

(2) The written statement prepared pursuant to subdivision (b) of Section 11346.1.

(3) An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.

(4) Any evidence relevant to whether a regulation used by an agency is required to be adopted under this chapter.

Section 11350.3. Review of regulation disapproved by Office of Administrative Law

Any interested person may obtain a judicial declaration as to the validity of a regulation or order of repeal which the office has disapproved ~~or ordered repealed~~ pursuant to Section 11349.3, ~~11349.6, or 11349.7~~ or 11349.6, or of a regulation that has been ordered repealed pursuant to Section 11349.7 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so determines, it may order the office to immediately file the regulation with the Secretary of State.

ARTICLE 9. SPECIAL PROCEDURES

SECTION

11351. Application of Articles to Public Utilities Commission, Division of Workers' Compensation, and Workers' Compensation Appeals Board
11352. Water quality certification; waste discharge requirements, permits, and waivers; application of chapter to certain actions

- 11353. State water quality control policies, plans, and guidelines
- 11354. Application of Sections 11352 and 11353 in civil actions pending on June 1, 1992
- 11354.1 Amendments to San Francisco Bay Plan or Special Area Plan, Suisun Marsh Protection Plan, Suisun Marsh Local Protection Program
- 11356. Building standards or regulations
- 11357. Department of Finance Criteria for Cost Impact Estimates
- 11359. Fire and Panic Safety Regulations; Approval Requirements; Exemption

Section 11351. Application of Articles to Public Utilities Commission, Division of Worker's Compensation, and Workers' Compensation Appeals Board

(a) Except as provided in subdivision (b), Article 5 (commencing with Section 11346), Article 6 (commencing with Section 11349), Article 7 (commencing with Section 11349.7), and Article 8 (commencing with Section 11350) shall not apply to the Public Utilities Commission or the Workers' Compensation Appeals Board, and Article 3 (commencing with Section 11343) and Article 4 (commencing with Section 11344) shall apply only to the rules of procedure of these state agencies.

(b) The Public Utilities Commission and the Workers' Compensation Appeals Board shall comply with paragraph (5) of subdivision (a) of Section 11346.4 with respect to regulations that are required to be filed with the Secretary of State pursuant to Section 11343.

(c) Article 8 (commencing with Section 11350) shall not apply to the Division of Workers' Compensation.

Section 11352. Water quality certification; waste discharge requirements, permits, and waivers; application of chapter to certain actions.

The following actions are not subject to this chapter:

- (a) The issuance, denial, or waiver of any water quality certification as authorized under Section 13160 of the Water Code.
- (b) The issuance, denial, or revocation of waste discharge requirements and permits pursuant to Sections 13263 and 13377 of the Water Code and waivers issued pursuant to Section 13269 of the Water Code.

Section 11353. State water quality control policies, plans, and guidelines

(a) Except as provided in subdivision (b), this chapter does not apply to the adoption or revision of state policy for water quality control and the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(b) (1) Any policy, plan, or guideline, or any revision thereof, that the State Water Resources Control Board has adopted or that a court determines is subject to this part, after June 1, 1992, shall be submitted to the office.

(2) The State Water Resources Control Board shall include in its submittal to the office all of the following:

(A) A clear and concise summary of any regulatory provisions adopted or approved

as part of that action, for publication in the California Code of Regulations.

(B) The administrative record for the proceeding. Proposed additions to a policy, plan, or guideline shall be indicated by underlined text and proposed deletions shall be indicated by strike-through text in documents submitted as part of the administrative record for the proceeding.

(C) A summary of the necessity for the regulatory provision.

(D) A certification by the chief legal officer of the State Water Resources Control Board that the action was taken in compliance with all applicable procedural requirements of Division 7 (commencing with Section 13000) of the Water Code.

(3) Paragraph (2) does not limit the authority of the office to review any regulatory provision which is part of the policy, plan, or guideline submitted by the State Water Resources Control Board.

(4) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the State Water Resources Control Board or the appropriate regional water quality control board to determine compliance with the public participation requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(5) The policy, plan, guideline, or revision shall not become effective unless and until the regulatory provisions are approved by

the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the State Water Resources Control Board.

(7) Any proceedings before the State Water Resources Control Board or a California regional water quality control board to take any action subject to this subdivision shall be conducted in accordance with the procedural requirements of Division 7 (commencing with Section 13000) of the Water Code, together with any applicable requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements of this chapter, other than the requirement for review by the office in accordance with this subdivision, shall not apply.

(8) This subdivision shall not provide a basis for review by the office under this subdivision or Article 6 (commencing with Section 11349) of any such policy, plan, or guideline adopted or revised prior to June 1, 1992.

(c) Subdivision (a) does not apply to a provision of any policy, plan, guideline, or revision, as applied to any person who, as of June 1, 1992, was a party to a civil action challenging that provision on the grounds that it has not been adopted as a regulation pursuant to this chapter.

(d) Copies of the policies, plans, and guidelines to which subdivision (a) applies shall be maintained at central locations for inspection by the public. The State Water Resources Control Board shall maintain, at its headquarters in Sacramento, a current copy of each policy, plan, or guideline in effect. Each regional water quality control board shall maintain at its headquarters a

current copy of each policy, plan, or guideline in effect in its respective region. Any revision of a policy, plan, or guideline shall be made available for inspection by the public within 30 days of its effective date.

Section 11354. Application of Sections 11352 and 11353 in civil actions pending on June 1, 1992.

Sections 11352 and 11353 do not affect any court's determination, relating to the applicability of this chapter to any provision of a policy, plan, or guideline, in a civil action which was pending on June 1, 1992, and on that date included a challenge to a provision of a policy, plan, or guideline on the grounds that it has not been adopted in accordance with this chapter.

Section 11354.1. Amendments to San Francisco Bay Plan or Special Area Plan, Suisun Marsh Protection Plan, Suisun Marsh local protection program

(a) For purposes of this section, "commission" means the San Francisco Bay Conservation and Development Commission.

(b) Except as provided in subdivision (d), this chapter does not apply to any policy, plan, or guideline adopted by the commission prior to January 1, 1996, pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2 of this code or Division 19 (commencing with Section 29000) of the Public Resources Code.

(c) The issuance or denial by the commission of any permit pursuant to subdivision (a) of Section 66632, and the issuance or denial by, or appeal to, the

commission of any permit pursuant to Chapter 6 (commencing with Section 29500) of Division 19 of the Public Resources Code, are not subject to this chapter.

(d)(1) Any amendments or other changes to the San Francisco Bay Plan or to a special area plan pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2, and amendments or other changes to the Suisun Marsh Protection Plan, as defined in Section 29113 of the Public Resources Code, or in the Suisun Marsh local protection program, as defined in Section 29111 of the Public Resources Code, adopted by the commission on and after January 1, 1996, shall be submitted to the office.

(2) The commission shall include in its submittal to the office pursuant to paragraph (1) both of the following documents:

(A) A clear and concise summary of any regulatory provision adopted or approved by the commission as part of the proposed change for publication in the California Code of Regulations.

(B) The administrative record for the proceeding, and a list of the documents relied upon in making the change. Proposed additions to the plans shall be indicated by underlined text, and proposed deletions shall be indicated by strike-through text in documents submitted as part of the administrative record for the proceeding.

(3) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the commission to determine compliance with the public participation requirements of Sections 11000 to 11007, inclusive, of Title

14 of the California Code of Regulations, and to ensure that the commission considers all relevant matters presented to it before adopting, amending, or repealing any regulatory provision, and that the commission explains the reasons for not modifying a proposed plan change to accommodate an objection or recommendation. The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(4) In reviewing proposed changes to the commission's plans for the criteria specified in subdivision (a) of Section 11349.1, the office shall consider the clarity of the proposed plan change in the context of the commission's existing plans.

(5) The proposed plan or program change subject to this subdivision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the commission.

(e) Except as provided in subdivisions (b) and (c), the adoption of any regulation by the commission shall be subject to this chapter in all respects.

Section 11356. Building standards or regulations

(a) Article 6 (commencing with Section 11349) is not applicable to ~~any building~~

~~standards or administrative regulations that apply directly to the implementation or enforcement of a building standard, subject to the approval of the State Building Standards Commission~~ a building standard.

(b) Article 5 (commencing with Section 11346) is applicable to those building standards, except that the office shall not disapprove those building standards nor refuse to publish any notice of proposed building standards if either has been approved by, and submitted to, the office by the ~~State~~ California Building Standards Commission pursuant to Section 18935 of the Health and Safety Code.

Section 11357. Department of Finance Criteria for Cost Impact Estimates

(a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency subject to this chapter shall use in making the determination required by paragraph (5) and the estimate required by paragraph (6) of subdivision (a) of Section 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to

Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

(4) The format the agency preparing the estimate shall follow in summarizing and reporting its estimate of the cost or savings to state and local agencies, school districts, and in federal funding of state programs that will result from the regulation.

(b) Any action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, or administration of the state budget, including any instructions included in the State Administrative Manual, shall be exempt from this chapter.

(c) The Department of Finance may review any estimate prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.

Section 11359. Fire and Panic Safety Regulations; Approval Requirements; Exemption

(a) Except as provided in subdivision (b), on and after January 1, 1982, no new regulation or the amendment or repeal of any regulation, which regulation is intended to promote fire and panic safety or provide fire protection and prevention, including fire suppression systems, equipment, or alarm regulation, is valid or effective unless it is submitted by, or approved in writing by, the State Fire Marshal before transmittal to the Secretary of State or the Office of Administrative Law.

(b) Approval of the State Fire Marshal is not required if the regulation is expressly required to be at least as effective as federal

standards published in the Federal Register pursuant to Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596) within the time period specified by federal law and as provided in subdivision (b) of Section 142.4 of the Labor Code, and as approved by the Occupational Safety and Health Administration of the United States Department of Labor as meeting the requirements of subdivision (a) of Section 142.3 of the Labor Code, unless the regulation is determined by the State Fire Marshal to be less effective in promoting fire and panic safety than regulations adopted by the State Fire Marshal.

Section 15379.50. State Agency Small Business Liaison.

(a) Each state agency that significantly regulates small business or that significantly impacts small business shall designate at least one person who shall serve as a small business liaison. The agency shall utilize existing personnel and resources to perform the duties of small business liaison.

(b) Each state agency that significantly regulates small business or that significantly impacts small business shall widely publicize the position of small business liaison in appropriate agency publications and on the agency's website if the agency has a website.

(c) The small business liaison shall be responsible for all of the following:

(1) Receiving and responding to complaints received by the agency from small businesses.

(2) Providing technical advice and assisting small businesses in resolving problems and questions.

(3) Reporting small business concerns and, where appropriate, reporting recommendations to the agency secretary or to the agency head, as defined in Section 11405.50.

(d) The small business liaison shall not

advocate for or against the adoption, amendment, or repeal of any regulation or intervene in any pending investigation or enforcement action.

Section 65054. The California Office of Small Business Advocate.

(a) The Legislature finds and declares that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and maintain a healthy state economy.

(b) In order to advocate the causes of small business and to provide small businesses with the information they need to survive in the marketplace, there is created within the Office of Planning and Research the Office of Small Business Advocate.

(c) Post on its Internet website the name and telephone number of the small business liaison designated pursuant to Chapter 3.7 (commencing with Section 15379.50) of Part 6.7.

Section 65054.1. Definitions.

The following definitions apply to Sections 15334.5 to 15334.8, inclusive, unless otherwise indicated:

(a) "Advocate" means the California Small Business Advocate who is also the Director of the Office of Small Business Advocate.

(b) "Director" means the Director of the Office of Small Business Advocate.

(c) "Office" means the Office of Small Business Advocate.

Section 65054.3. Duties of the Advocate

(a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees that are needed to accomplish the purposes of Section 65054, this section, and Section 65054.4.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations which affect small businesses.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government which are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Issue a report every two years evaluating the efforts of state agencies and, where appropriate, specific departments that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.

(5) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest.

(6) Determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop that criteria, if appropriate.

(7) Seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison designated pursuant to Section 15379.50, to ensure coordination of state efforts.

(8) Receive and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.

(9) Counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

(10) Maintain, publicize, and distribute an annual list of persons serving as small business ombudsmen throughout state government.

Section 65054.4. State Agency Furnishing Information to Advocate; Reports by Advocate; Advocate's Centralized Telephone Referral System.

(a) Each agency of the state shall furnish to the advocate the reports, documents, and information that are public records and that the director deems necessary to carry out his or her functions under this chapter.

(b) The advocate shall prepare and submit a written annual report to the Governor and to the Legislature that describes the activities and recommendations of the office.

(c) The advocate may establish a centralized interactive telephone referral system to assist small and minority businesses in their operations, including governmental requirements, such as taxation, accounting, and pollution control, and to provide information

concerning the agency from which more specialized assistance may be obtained. The advocate may establish and advertise a telephone number to serve this centralized interactive telephone referral system.

Section 65054.5. Governor's Small Business Reform Task Force.

(a) There is hereby created a Governor's Small Business Reform Task Force. The task force shall be chaired by the Director of the Office of Small Business Advocate and shall include representatives appointed by the Governor from the California Small Business Association, other small business associations, and agency secretaries or their designees from state agencies heavily involved in small business regulation.

(b) The task force shall identify problems and ideas from the small business community concerning the regulation, communication, and assistance of state government with small business. The task force shall create a website to solicit public input, as well as, conduct at least four public hearings around the state to seek advice and recommendations.

(c) The task force shall conduct a study to consider the problems encountered by small businesses working with different levels of government, different offices in state and local government, and multiple jurisdictions, especially in the context of applying for and obtaining required permits and licenses. The study may include participation by the California League of Cities, county boards of supervisors, and small business representatives.

(d) The task force shall prepare and submit a report on or before May 1, 2002, to the Governor and the budget committee of each house of the Legislature with a discussion of its findings and recommendations.

**HEALTH AND SAFETY CODE--
REGULATION OF
ENVIRONMENTAL PROTECTION**

**California Environmental Protection
Agency**

Section 57004. Scientific Peer Review.

(a) For purposes of this section, the following terms have the following meanings:

(1) "Rule" means either of the following:

(A) A regulation, as defined in ~~subdivision (g) of Section 11342~~ Section 11342.600 of the Government Code.

(B) A policy adopted by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) that has the effect of a regulation and that is adopted in order to implement or make effective a statute.

(2) "Scientific basis" and "scientific portions" mean those foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.

(b) The agency, or a board, department, or office within the agency, shall enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that is

recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption by any board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 ~~or rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20~~ or Chapter 3.5 (commencing with Section 39650) of Division 26 shall be deemed to have complied with this section if it complies with the peer review processes established pursuant to these statutes.

(c) No person may serve as an external scientific peer reviewer for the scientific portion of a rule if that person participated in the development of the scientific basis or scientific portion of the rule.

(d) No board, department, or office within the agency shall take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department or office has failed to

demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

(e) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(f) Nothing in this section shall be interpreted to, in any way, limit the authority of a board, department, or office within the agency to adopt a rule pursuant to the requirements of the statute that authorizes or requires the adoption of the rule.

Section 57005. Major regulations; evaluation of alternatives; guidelines

(a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (7) of subdivision (a) of Section 11346.5 of the

Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars (\$10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by subdivision (a) of Section 11346.3 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.